

MAR 16 2009

ROBERT H. SHEMMWELL, CLERK  
BY ck  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

THE ISLE OF CAPRI CASINOS, INC. : DOCKET NO. 08-529

VS. : JUDGE TRIMBLE

COL MANAGEMENT D/B/A OPEN : MAGISTRATE JUDGE KAY  
AIR MIR OF LAKE CHARLES, E T  
AL

**MEMORANDUM RULING**

Before the Court are motions to dismiss (docs. #22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38) wherein Defendants' move to dismiss the claims asserted by Plaintiffs because they have allegedly failed to meet the jurisdictional amount required for diversity jurisdiction pursuant to 28 U.S.C. § 1332 as to each Defendant.

28 U.S.C. § 1332 confers federal diversity jurisdiction on civil actions where the matter in controversy exceeds the sum or value of \$75,000.00. In an action for declaratory relief, the amount in controversy is "the value of the right to be protected or the extent of the injury to be prevented."<sup>1</sup>

In the instant suit and suits that involve the same issues, we have consistently held that the value of that right includes not only the discount taken on the workers' compensation bills, but also the potential penalties pursuant to Louisiana Revised Statute 23:1201(F) (with each claim being subject to up to a \$2,000.00 penalty plus attorney's fees) and the potential penalties pursuant to Louisiana Revised Statute 40:2203.1 *et seq.* (with penalties of twice the bill it charges or \$50.00 per day, per

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<sup>1</sup> *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983).

claim, plus attorney's fees).<sup>2</sup>

*COL Management d/b/a Open Air MRI of Lake Charles*

Plaintiff has submitted an affidavit<sup>3</sup> which states that there are 20 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Lake Charles Medical and Surgical Clinic*

Plaintiff has submitted an affidavit<sup>4</sup> which declares that there are 15 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Dr. Frank Lopez*

Plaintiff has submitted an affidavit<sup>5</sup> which declares that there are 47 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute

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<sup>2</sup> *Sentry Insurance v. Southwest Louisiana Hospital Association d/b/a Lake Charles Memorial Hospital*, Docket No. 06-570 (W.D. La.06/04/2008).

<sup>3</sup> Affidavit of Fran Sullivan.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Center for Orthopaedics*

Plaintiff has submitted an affidavit<sup>6</sup> which declares that there are 13 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Dr. Fayez Shamieh*

Plaintiff has submitted an affidavit<sup>7</sup> which declares that there are 11 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Action Potential Physical Therapy*

Plaintiff has submitted an affidavit<sup>8</sup> which declares that there are 54 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

controversy exceeds the jurisdictional amount.

*Rehab and Rheumatology Associates, Inc.*

Plaintiff has submitted an affidavit<sup>9</sup> which declares that there are 11 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Neurosurgery Center of Lake Charles*

Plaintiff has submitted an affidavit<sup>10</sup> which declares that there are 3 bills that are allegedly underpaid. The Affiant further declares that one of those bills is over four years old and the other two are over three years old. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Dr. Lynn Foret*

Plaintiff has submitted an affidavit<sup>11</sup> which declares that there are 36 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

controversy exceeds the jurisdictional amount.

*Lake Charles Memorial Hospital*

Plaintiff has submitted an affidavit<sup>12</sup> which declares that there are 27 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Pain Management*

Plaintiff has submitted an affidavit<sup>13</sup> which declares that there are 22 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Dr. Thomas Rossowski, APMC*

Plaintiff has submitted an affidavit<sup>14</sup> which declares that there are 2 bills that are allegedly underpaid. The Affiant further states that both of the EOBs are over four years old. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

jurisdictional amount.

*Dr. Clark Gunderson, APMC*

Plaintiff has submitted an affidavit<sup>15</sup> which declares that there are 21 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Masse Chiropractic Clinic*

Plaintiff has submitted an affidavit<sup>16</sup> which declares that there are 3 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*COL Management d/b/a Bernauer Imaging*

Plaintiff has submitted an affidavit<sup>17</sup> which declares that there are 6 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

*Bernauer Imaging*

Plaintiff has submitted an affidavit<sup>18</sup> which declares that there are 5 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Neil Clinic*

Plaintiff has submitted an affidavit<sup>19</sup> which declares that there is 1 bill that is allegedly underpaid. The Affiant further declares that as of June 13, 2008, the EOB was over three years old. Thus, the Court will take into consideration that approximately nine (9) months has passed as well as the potential attorney's fees in both of the penalty statutes. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in controversy exceeds the jurisdictional amount.

*Advanced Medical and Diagnostic Center*

Plaintiff has submitted an affidavit<sup>20</sup> which declares that there are 6 bills that are allegedly underpaid. Considering the potential \$2,000.00 per claim penalty pursuant to Louisiana Revised Statute 23:1201(F) and attorney's fees, plus the penalties pursuant to Louisiana Revised Statute 40:2201 at \$50 per day, per claim, with attorney's fees, the Court concludes that the amount in

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

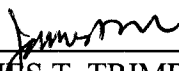
<sup>20</sup> *Id.*

controversy exceeds the jurisdictional amount.

**CONCLUSION**

For the reasons set forth above, the motions to dismiss will be **DENIED**.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 16<sup>th</sup> day of  
March, 2009.

  
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JAMES T. TRIMBLE, JR.  
UNITED STATES DISTRICT JUDGE